

EXHIBIT E

N23VHER1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 HERMÈS INTERNATIONAL, et al.,

4 Plaintiffs,

5 v.

22 Civ. 384 (JSR)

6 MASON ROTHSCHILD,

7 Defendant.

Trial

8 -----x

New York, N.Y.
February 3, 2023
9:35 a.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge
13 -and a Jury-

14
15 APPEARANCES

16 BAKER & HOSTETLER LLP
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Attorneys for Defendant
22 BY: RHETT O. MILLSAPS, II
23 CHRISTOPHER SPRIGMAN

N23VHER1

Binoche - Cross

1 A. No, because the art buying department share with me the
2 name of the artist. And regarding Neil Beloufa, the artist I
3 talked about yesterday, we discover in during the innovation
4 day an internal event at Hermès.

5 Q. And so Hermès liked these artists and invited them to
6 collaborate, is that how it happened?

7 A. Yes.

8 Q. And when Hermès does a collaboration with an artist like
9 this, does Hermès make clear that Hermès is behind the project
10 with this artist?

11 A. Can you translate?

12 Yes. I think that when I explain yesterday, the
13 creation Lucas Zanotto does for our Instagram account, we
14 mention the name of the artist in the caption. And it's a way
15 to express that we work with him.

16 MR. MILLSAPS: Ashley, would you please put up
17 Plaintiffs' Exhibit 43 which is in evidence.

18 Q. Ms. Binoche, this is an exhibit we were looking at
19 yesterday of a -- is this an Instagram post by Hermès?

20 A. Yes.

21 Q. And this is the video that Hermès created in collaboration
22 with the artist Lucas Zanotto; is that right?

23 A. Yes.

24 Q. Is this typically how Hermès promotes an artistic
25 collaboration, as you see it here in this Instagram post?

N23VHER1

Binoche - Cross

1 A. Yes, by mentioning the name of the artist in the caption of
2 the post.

3 Q. Does Hermès ever do a collaboration with an artist that is
4 promoted only by the artist name, but without any mention of
5 Hermès?

6 A. I'm going to ask for translation.

7 I think that it's clear on this post that it's a
8 collaboration between Hermès and the artist, as it is post on
9 Hermès account. And we mention the name of the artist.

10 Q. And when Hermès collaborates with an artist, is it correct
11 that Hermès makes clear in its promotions that it's Hermès
12 collaborating with a particular artist?

13 A. I think that with that kind of promotion, it's clear.

14 Q. I just want to make sure you understand. I'm not just
15 asking about this Instagram post. I'm saying in general, when
16 you collaborate with an artist, when you promote that
17 collaboration, do you make clear that Hermès is collaborating
18 with that artist?

19 A. I think that it depends of the supports. On Instagram it
20 is important for us to show that kind of things from creation.

21 Q. By the way, Ms. Binoche, do you know how Lucas Zanotto made
22 this video that we see here, the screenshot of it that we see?

23 A. I'm not creation expert, but through a dedicated tool, you
24 know, that creates 3D video, that kind of thing.

25 Q. Do you know if Lucas Zanotto works with any assistant or

N23VHER3

Moulin - Direct

1 A. Yes. We do three types of activity, I would say.

2 First one is that we perform a technological watch,
3 meaning we explore new trends, new technologies, and try to
4 find which technologies could create value for the business
5 divisions of Hermès.

6 Q. That's one.

7 A. Next we make Hermès employees aware of those technologies,
8 especially the business division, that could be interested by
9 those technologies.

10 Q. What's the third?

11 A. And then when we have a match between a technology and
12 business division, we develop a solution, test it, and
13 eventually commercialize it.

14 Q. And when you arrived at H Lab, was Hermès working on NFTs?

15 A. Yes.

16 Q. How so?

17 A. We were working on an idea of digital certificates,
18 certificate that would involve in it.

19 Q. And you joined in 2020, but do you know when Hermès started
20 working on NFTs?

21 A. In December 2019.

22 Q. Was H Lab working with any third parties for the digital
23 certificates?

24 A. Yes.

25 Q. Who were the third parties?

N23VHER3

Moulin - Direct

1 A. Third party vendor called Arianee.

2 Q. Can you spell that for the reporter?

3 A. A-R-I-A-N-E-E.

4 Q. And when did H Lab partner with Arianee?

5 A. In December 2019.

6 Q. Who is Arianee?

7 A. Arianee is a leading NFT platform that works for brands and
8 especially for fashion and luxury industry.

9 Q. Who was responsible for developing ideas on NFTs within
10 Hermès?

11 A. Mainly the H Lab, in collaboration with business divisions,
12 and some functions at Hermès, like legal and communication.

13 Q. When H Lab is working on a project like NFTs, does that
14 need to be approved by someone before H Lab can develop it?

15 A. Yes.

16 Q. And can you explain the approval process briefly.

17 A. Yes. Usually it's approved -- it has to be approved by top
18 management of the business division, and then by an executive
19 committee sponsor.

20 Q. Okay. And what use or uses does Hermès believe it has for
21 NFTs?

22 A. We have five main uses. The first one is the one I already
23 spoke about, digital certificates for different products. Then
24 some uses would be NFTs as proof of attendance for private
25 events or for events within Hermès that could provide exclusive

N23VHER3

Moulin - Direct

1 services; the NFT could provide exclusive services and
2 products. Then we consider use of an NFT as a virtual product
3 for virtual world, video games. Then we also think of NFTs as
4 a product, a virtual product itself that could be a piece of
5 art, for example, as decorative purpose. And finally, the last
6 one would be NFTs as a collectible to celebrate loyalty.

7 MR. WARSHAVSKY: Can you please publish Plaintiffs'
8 Exhibit 27 which was just received.

9 Q. Have you seen this document before?

10 A. Yes.

11 Q. Did you create this document?

12 A. Yes.

13 Q. And when did you create it?

14 A. In June 2021.

15 Q. And why did you create it?

16 A. To explain NFTs internally, what it is and what are the
17 applications we could imagine for Hermès.

18 MR. WARSHAVSKY: And if we could turn to page 28.

19 Q. Can you tell me what this slide shows.

20 A. A summary of different NFT applications.

21 Q. And these are the cases you were just talking about?

22 A. Yes.

23 MR. WARSHAVSKY: Can we turn to page 29.

24 Q. And can you explain what this slide shows?

25 A. It's NFT digital certificate to combat fraud.

N23VHER3

Moulin - Direct

1 Q. And can you explain how a digital certificate would combat
2 fraud?

3 A. Yes. The idea that you go to one of our stores, you buy a
4 bag or a watch, for example. It goes with a digital
5 certificate. Digital certificate is there to authenticate the
6 bag or the watch. And so you could declare it stolen if it has
7 been stolen, and it's also a way to combat counterfeiting.

8 (Continued on next page)

N23sHER4

Moulin - Direct

1 BY MR. WARSHAVSKY:

2 Q. Is Hermès working on this application?

3 A. Yes.

4 Q. And you're involved in this application?

5 A. Yes.

6 Q. Can we turn to page 30.

7 Can you explain what this is?

8 A. It's the idea for NFT as a proof of that could provide
9 exclusive services for excluded products, for example.

10 Q. Is Hermès working on this application?

11 A. Yes.

12 Q. Could we turn to page 31, please.

13 Can you explain what this slide shows?

14 A. It's NFT as virtual product to be used in virtual worlds or
15 video games.

16 Q. What types of products would that be?

17 A. It would be any product. It could be a scarf, a watch, a
18 bag, a clothing or shoe, that could be used to dress your
19 avatar in a virtual world.

20 Q. Is this an application Hermès is currently considering?

21 A. I'm sorry, yes.

22 Q. Can we turn to page 32.

23 Can you explain what this slide shows?

24 A. It's the idea of NFTs as a virtual product that could be
25 used as a proposed decorative purpose in your home or in your

N23sHER4

Moulin - Direct

1 virtual gallery.

2 Q. Can you explain how that would work?

3 A. You can imagine that you have a piece of art that is
4 delivered through an NFT, and that could be displayed on some
5 TVs compatible with NFTs in your home or could be displayed in
6 a virtual gallery on the wallet of a virtual gallery, like,
7 virtual world.

8 Q. Has Hermès developed this application?

9 A. Yes.

10 Q. When did Hermès begin developing this application?

11 A. We began discussing the project in November 2021 and began
12 the project itself in January 2022.

13 Q. Did Hermès actually roll out the product?

14 A. Internally, yes.

15 Q. We'll come back to this in a minute. Can you turn to
16 page 33, please.

17 Can you explain what this slide shows?

18 A. It's NFTs as collectible that you could retrieve in any
19 touchpoint with a brand and that could celebrate loyalty.

20 Q. Could we turn back to page 35.

21 Can you explain what this slide shows?

22 A. It shows the idea of using NFTs as virtual products in
23 video games, virtual, that could be used in different types of
24 games.

25 Q. Could you provide an example to explain what that means?

N23sHER4

Moulin - Direct

1 A. Yeah. It's, for example, you have virtual wardrobe or
2 virtual scarf or tie. You could dress your avatar with it and
3 play in Roblox or Fortnite or whatever.

4 Q. I see there are other brands on this slide. Why did you
5 list them?

6 A. To strengthen the argument that it was interesting for us
7 to investigate this space, and that we already did and already
8 entered this space.

9 Q. Just to explain, when you're talking about things like
10 clothing or what's listed here, why would it need to be an NFT?

11 A. Mainly because it's a way to get something that's
12 interpretable, meaning that you can use it in different video
13 games. You can use the same clothes in Fortnite or in Roblox
14 or in SunBot or whatever virtual world is. And also because
15 it's a way to own it and to have something that is unique as
16 our real physical products. A Birkin bag, for example, is
17 unique. It's uniquely made by craftman, and we would like to
18 have the same thing in the virtual world.

19 Q. I would like to publish Exhibit 34, please.

20 Looking at this and if we can go to -- I see we're on
21 page two.

22 Have you seen this document before?

23 A. Yes.

24 Q. Can you tell us what this document is?

25 A. It's an e-mail I sent to my team. I forward it to my team.

N23sHER4

Moulin - Cross

1 THE COURT: Cross-examination.

2 CROSS-EXAMINATION

3 BY MR. HARRIS:

4 Q. Good afternoon.

5 Is it Mr. Moulin?

6 A. Yes.

7 Q. OK. My name is Jonathan Harris. I'm one of Mason
8 Rothschild's attorneys. Nice to meet you.

9 You were answering questions at the end about the
10 horse NFT, right?

11 That horse NFT has not been released to the public,
12 right?

13 A. Right.

14 Q. And Hermès has, none of these things you talked about today
15 have been released to the public, right?

16 A. Right.

17 Q. OK. And the only people who have the horse NFT, if I heard
18 your testimony right, are employees, right?

19 A. Yes.

20 Q. And do employees get anything for having the horse NFT?

21 A. No.

22 Q. OK. So let's take a look.

23 Let's take these. Mr. Warshavsky showed you
24 Plaintiff's Exhibit 27, and that's --

25 MR. HARRIS: If we can put that up, please, Ashley..

N23VHER5

Isaacson - Direct

1 And so in this context, if there's confusion, then a
2 company like Hermès loses control of their brand experience.
3 And that's something that companies find very --

4 MR. OPPENHEIM: Objection, your Honor.

5 Move to strike the final part.

6 THE COURT: Sustained.

7 Q. One last quick question for the moment, Dr. Isaacson.

8 Had you ever heard of defendant Mason Rothschild's
9 proffered expert witness, Dr. David Neal, before this lawsuit?

10 A. No.

11 Q. Thank you for your time today.

12 MS. WILCOX: I don't have any further questions at
13 this time.

14 THE COURT: All right. So we will take our
15 mid-afternoon break.

16 Again, ladies and gentlemen, to keep things rolling,
17 if we can hold it to about ten minutes, that would be
18 appreciated.

19 (Jury not present)

20 THE COURT: You may step down.

21 We'll see you in ten minutes.

22 THE WITNESS: Thank you, your Honor.

23 THE COURT: All right. We'll see you in ten minutes.

24 Oh, I'm sorry. Let me have my law clerk hand out to
25 counsel my proposed jury instructions. And we're going to have

N23sHER6

Vittadini - Direct

1 Q. Did the Financial Times include the statement from
2 Hermès --

3 A. Yes.

4 Q. -- to your recollection?

5 Did Hermès receive other inquiries?

6 I think you said Hermès received another inquiry
7 around the same time?

8 A. Yes, two days later, Business of Fashion.

9 MR. WARSHAVSKY: OK. Given the court's prior ruling,
10 I'm not going to ...

11 Q. How did you receive --

12 THE COURT: That seems very shrewd on your part.

13 MR. WARSHAVSKY: I try to evolve.

14 Q. Do you remember how you were contacted by Business of
15 Fashion?

16 A. By e-mail.

17 Q. Do you remember the name of the individual who e-mailed
18 you?

19 A. Marc Bain.

20 Q. And do you remember what, if anything, Mr. Bain was asking
21 Hermès to comment on?

22 A. Yes. Mr. Bain wanted to know if there was a connection
23 between us and the -- and Mr. Rothschild on the project.

24 Q. Did Hermès respond to Mr. Bain?

25 A. No.

N23sHER6

Vittadini - Direct

1 Q. What are the -- you spoke a little bit earlier about
2 important fashion magazines.

3 What are the most important fashion magazines from
4 Hermès' perspective?

5 A. So fashion, I would say Vogue, Elle, Harper's Bazaar, and
6 L'Officiel. And then business fashion, I would say Women's
7 Wear Daily and Business of Fashion. And then the luxury and
8 fashion sections of Financial Times and *New York Times* for
9 sure.

10 Q. After the Financial Times article was published, did other
11 press sources, to your knowledge, did other press continue to
12 publish articles about an association or possible association
13 between the MetaBirkins and Hermès?

14 A. Yes.

15 Q. Can you give some examples of the publications you're aware
16 of?

17 A. Elle, L'Officiel, New York Post, and Challenges.

18 Q. I would like to turn to Plaintiff's Exhibit 380 which has
19 been accepted and publish that for the jury.

20 Is this the Elle article you were referring to?

21 A. Yes.

22 Q. And when did you first see it?

23 A. December 2021.

24 Q. Do you know the full title of the article?

25 A. Birkin NFT: Everything you need to know about the handbag

N23sHER6

Vittadini - Direct

1 of the future. Birkins for the digital age?

2 Q. Do you know whether this was always the title of the Elle
3 article?

4 A. No, it wasn't.

5 Q. OK. The title, do you know -- was the title corrected from
6 something else?

7 A. Yes.

8 Q. And how do you know that the title was corrected?

9 A. Because part of the monitoring was on Google, and when we
10 Googled Hermès NFT, we found another title for the Elle
11 article.

12 MR. WARSHAVSKY: OK. And if we can turn to
13 Plaintiff's Exhibit 45. Again, this was previously admitted,
14 so it can be published.

15 Q. Can you tell us what this document is?

16 A. It's a Google research of the two keywords Hermès and NFT.

17 Q. Is this a search that you did?

18 A. Yes.

19 Q. And when did you do it?

20 A. Last week on the 26 of January.

21 Q. And where were you doing the search from?

22 A. New York.

23 Q. And what about this search caught your eye?

24 A. So the second title is the Elle article, and the title is
25 Hermès Goes Virtual with Launch of Birkin Bags as NFTs.

N23sHER6

Vittadini - Direct

1 Q. OK. So just to be clear -- if you can scroll up little
2 bit, Humberto -- your search here was just for Hermès NFT on
3 Google?

4 A. Yes.

5 Q. If we could -- I'm sorry.

6 Obviously, does this title match the Elle article we
7 saw a moment ago?

8 A. No.

9 Q. OK. If we can turn to plaintiff's Exhibit 315.

10 Have you seen this document before?

11 A. Yes.

12 Q. And what is it?

13 A. It's the article from Elle.

14 Q. OK. And this one is taken from the page wall, is that
15 right?

16 A. Yes.

17 Q. OK. And if we go to the bottom, can you see the title
18 there?

19 A. So, yeah. Hermès goes virtual --

20 Q. Hang on. If you can scroll down for the --

21 A. Hermès Goes Virtual with Launch of Birkin Bag as NFTs.

22 Q. Thank you.

23 As part of your job with Hermès, do you have any idea
24 about the circulation of Elle?

25 A. At Elle, it's about, yes, several million readers. And in

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Vittadini - Direct

1 Q. What are the -- you spoke a little bit earlier about
2 important fashion magazines.

3 What are the most important fashion magazines from
4 Hermès' perspective?

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6 L'Officiel. And then business fashion, I would say Women's
7 Wear Daily and Business of Fashion. And then the luxury and
8 fashion sections of Financial Times and *New York Times* for
9 sure.

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11 press sources, to your knowledge, did other press continue to
12 publish articles about an association or possible association
13 between the MetaBirkins and Hermès?

14 A. Yes.

15 Q. Can you give some examples of the publications you're aware
16 of?

17 A. Elle, L'Officiel, New York Post, and Challenges.

18 Q. I would like to turn to Plaintiff's Exhibit 380 which has
19 been accepted and publish that for the jury.

20 Is this the Elle article you were referring to?

21 A. Yes.

22 Q. And when did you first see it?

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Vittadini - Direct

1 of the future. Birkins for the digital age?

2 Q. Do you know whether this was always the title of the Elle
3 article?

4 A. No, it wasn't.

5 Q. OK. The title, do you know -- was the title corrected from
6 something else?

7 A. Yes.

8 Q. And how do you know that the title was corrected?

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10 Googled Hermès NFT, we found another title for the Elle
11 article.

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Vittadini - Direct

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2 bit, Humberto -- your search here was just for Hermès NFT on
3 Google?

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7 saw a moment ago?

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15 right?

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18 there?

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24 about the circulation of Elle?

25 A. At Elle, it's about, yes, several million readers. And in

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Vittadini - Cross

1 Does it mention Mr. Rothschild's name?

2 A. Of virtual Hermès Birkin bags.

3 Q. Yes.

4 A. The Elle one.

5 Q. It continues on.

6 A. Yes.

7 Q. And where that actually comes from, Ms. Vittadini, is if
8 you look at your exhibit -- I'm sorry.

9 If you look at Plaintiff's Exhibit 315 in evidence,
10 what that actually comes from is -- if you could put up the
11 first page of that exhibit, Ashley, and scroll down, please --
12 is that there is a little document title that wasn't corrected
13 by Elle, right?

14 A. Exactly.

15 Q. And you could ask Hermès could ask Elle to correct that,
16 correct?

17 A. I believe the article was corrected already, but the
18 metatitle, it's the title of the original document. And the
19 one that it's on Google, I think the metatitle, it's not
20 correctable.

21 Q. This is something that Elle could easily correct, right?

22 A. Elle already corrected the article.

23 Q. They did, they corrected the article and they just didn't
24 correct this little digital tag, right?

25 A. It's the -- it's the title, the metatitle.

N23sHER6

Vittadini - Cross

1 Q. I understand that, but actually my question was --

2 THE COURT: I think your question was, do they click
3 on articles about losing teams.

4 Go ahead, counsel.

5 Q. Right. You don't know how many people read the New York
6 Post for this article, right?

7 A. The New York Post, yes. This article in particular, I
8 don't have the right exact number.

9 Q. Now, if you look at the article you have up there, at page
10 nine, please. This is the paragraph at the top of the screen
11 is the paragraph that Mr. Warshavsky drew your attention to, is
12 that right?

13 A. I'm sorry?

14 I have --

15 THE COURT: This is the question, this is the item
16 that you were asked about before, right?

17 THE WITNESS: Yes.

18 THE COURT: Yes.

19 BY MR. HARRIS:

20 Q. In fact, this item you were asked before about quotes from
21 Elle magazine, right?

22 A. Yes.

23 Q. Now, do you know if the New York Post, like Elle magazine,
24 has since been corrected?

25 A. Yes.

N23sHER6

Vittadini - Cross

1 Q. And it has been, hasn't it?

2 A. Yes, by Hermès.

3 Q. Do you know if Mr. Rothschild -- do you know if
4 Mr. Rothschild also reached out to or his representatives
5 reached out to publications to correct?

6 THE COURT: She could only know that through hearsay.
7 Sustained.

8 MR. HARRIS: Your Honor, may I have one moment?

9 THE COURT: Yes.

10 MR. HARRIS: Your Honor, I have no further questions.

11 THE COURT: All right. Any redirect?

12 MR. WARSHAVSKY: No redirect, your Honor.

13 THE COURT: Thank you so much. Please step down.

14 (Witness excused)

15 Please call your last witness.

16 MR. WARSHAVSKY: Your Honor, the plaintiff actually
17 rests.

18 THE COURT: I know. I think defense counsel has a
19 final witness.

20 MR. HARRIS: We just have to go get her.

21 THE COURT: Go ahead. That's fine.

22 MR. WARSHAVSKY: Your Honor, as a practical matter,
23 Ms. Wilcox will be doing the cross.

24 THE COURT: OK. I don't think we'll probably get to
25 cross until Monday.